IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 37 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GANPATBHAI KHODIDASBHAI PATEL

Versus

KOKILABEN D/O MANILA AMTHIDAS PATEL

Appearance:

1. Civil Revision Application No. 37 of 2001

MR YN RAVANI for Petitioner No. 1

MRS NISHA M PARIKH for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 14/09/2001

ORAL JUDGEMENT

1. The petitioner-husband has filed H.M.P. No.84/99 in the Court of Civil Judge (Senior Division), Mahesana praying for decree of divorce against opponent-wife. The

opponent-wife has applied for interim maintenance for herself and her two minor daughters of the marriage living with her. The Trial Court has awarded Rs.1,000/per month to the wife and Rs.500/- each to the two daughters as interim maintenance. According to the opponent her husband was a very rich man and that he owned 20 bighas of land and his agricultural income was Rs.1 lac per year.

2. The petitioner has challenged the said order of interim maintenance under Section 115 of the Code of Civil Procedure.

3. The first contention raised is that the Trial Court has not taken into consideration the award of maintenance made by the Criminal Court in proceedings under Section 125 of the Code of Criminal Procedure. It is stated at the bar that initially by order dated 30.11.95, the order was made by the Criminal Court to pay Rs.350/- per month to the wife and Rs.175/- per month to one daughter and Rs.125/- per month to the other daughter. Subsequently, the said amount has been raised to Rs.975/per month in all by order dated 27.11.2000. The contention that the Criminal Court had made award of interim maintenance was not taken before the Trial Court in the present proceedings and, in any case, in my opinion looking to the income of the husband, even if the amount awarded by the Criminal Court in proceedings under Section 125 are to be considered, the total amount which is awarded cannot be said to be excessive so as to call for interference in the present Revision.

4. The second contention is that under Section 24 of the Hindu Marriage Act, the Court cannot make an award of interim maintenance in favour of minor children. The said contention is negatived by this Court in case of Chaitanyakumar Harikishanbhai Bhatt v. Naliniben C. Bhatt, reported in 1995 (2) G.L.H. 863, in which the view taken by this Court is that the Court has power to pass interim order of maintenance for minor children either on application or suo-motu.

5. The Trial Court has committed no jurisdictional error and there is no substance in this revision application. This revision application is therefore dismissed. Rule is discharged. Interim relief stands vacated.

14.9.2001. (M.C. Patel, J.)

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